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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,646	11/10/2000	Sameh A. Fakhouri	YOR920000201US1(13731)	5757

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EXAMINER

BRUCKART, BENJAMIN R

ART UNIT	PAPER NUMBER
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2155

DATE MAILED: 08/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/710,646

Applicant(s)

FAKHOURI ET AL.

Examiner

Benjamin R. Bruckart

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,9 and 17 is/are pending in the application.
- 4a) Of the above claim(s) 2-8, 10-16 and 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,9 and 17 is/are rejected.
- 7) ☒ Claim(s) 2-8, 10-16, 18-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

Detailed Action

Claims 1, 9, and 17 are pending in this Office Action.

Claims 1, 9, and 17 are amended.

Claims 1, 9, 17 remain rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,178,529 by Short et al.

Claim Objections

Claim 2-8, 10-16, 18-20 are objected to because of the following informalities:

While applicant has acknowledges the claims are drawn to a non-elected invention, applicant has not updated the status and corresponding status identifiers associated with those claims from 'original' to 'withdrawn' or 'cancelled.' The amendment status identifiers could be directed to a non-complaint amendment if not promptly acknowledged and fixed.

Appropriate correction is required.

Election/Restrictions

Applicant is reminded that upon the cancellation of claims to a non-elected invention (claims 2-8, 10-16, 18-20), the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Oath/Declaration

The objection to the oath and declaration is withdrawn in light of the signed oath and declaration submitted 7/21/05.

Claim Objections

The objections on claims 1, 9, and 17 are withdrawn in light of applicant's amendment.

Response to Arguments

Applicant's arguments filed in the amendment filed October 29, 2003, Paper No. 7, have been fully considered but they are not persuasive. The reasons are set forth below.

Applicant's invention as claimed:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 9, 17 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,178,529 by Short et al.

Regarding claim 1, a method for finding optimal configuration of one or more clusters of resources given a set of constraints and policies (Short: col. 5, lines 46 – col. 6, line 9; col. 7, lines 38-54; the constraints are the systems resources available and the policy grouping based on capabilities, load, feedback), including manually/semi-automatically/automatically, and concurrently discovering resources, resource groups, availability and unavailability of the resources and resource groups (Short: col. 4, lines 32-65; teaches manual and automatic discovery of resources; col. 6, lines 28-67 teach the states as offline=unavailable, online=available or paused), and determining their dependency (Short: col. 5, lines 51) and configuration information such as capacity and quality of service, cluster policies and changes thereto (Short: col. 4, lines 55-65; manages configuration data and membership when changes occur like regroup) as applied to a network of resources (Short: col. 3, lines 46-55), at cluster initialization and dynamically during cluster operation, for supporting a seamless startup and shutdown of cluster of resources according to the current policies and demands on the cluster resources and services (Short: col. 5, lines 46- col. 6, line 9).

Claims 9 and 17 teach the same limitations of claim 1. Although the examiner understands the difference between a method, an apparatus and program storage device, the examiner equates these to the code, hardware, and embodiment of the code in which the code runs the features of the invention. Therefore claims 9 and 17 are rejected under the same grounds as claim 1.

REMARKS

The Applicant Argues:

The Short reference does not teach “finding optimal configuration of one or more clusters of resources given a set of constraints and policies.”

In response, the examiner respectfully submits:

The Short reference does teach the cited limitation. The Short reference teaches monitoring systems and resources to make decisions about groupings of resources (Short: col. 5,

lines 46- col. 6, line 10). The constraints are the states of availability of the system and the corresponding dependent resources (Short: col. 5, lines 46-52; col. 6, lines 28-67). Policies are the guidelines for grouping the resources based on capabilities, current load, application feedback and/or preference list to run a specific application (Short: col. 7, lines 38-53). Col. 7 further teaches that when systems come back online, groups are pushed back to them system. The preferred owner is the newly online system and policy through failback illustrates the groups are moved back to the revived system. Col. 8 teaches if a resource fails and it cannot be restarted, the resource is moved to another system and restarted (Short: col. 7, lines 7-41). This shows the optimizing of the configuration of the resources and groups while dealing with the constraint of the resource failing.

Prior Art

U.S. Patent No. 6,449,641 by Moiin et al teaches optimal configuration of nodes of a cluster based on availability and membership requires.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

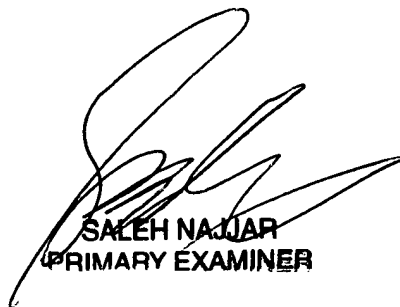
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin R. Bruckart whose telephone number is (571) 272-3982. The examiner can normally be reached on 8:00-5:30PM with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Benjamin R Bruckart
Examiner
Art Unit 2155

brb



SALEH NAJJAR
PRIMARY EXAMINER